

OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 95-18

October 31, 1995

TO: All Regional Directors, Officers-in-Charge  
and Resident Officers

FROM: Fred Feinstein, General Counsel

SUBJECT: Representation Case Training

The prompt resolution of questions concerning representation has long been one of my top priorities. My goal has been to be able to resolve these questions within a predictable range of time through the election process regardless of whether there is an agreement or a need for a formal adjudication. Our experience reflects that directed elections are normally conducted 30 to 40 days later than stipulated elections. It is my view that we need to eliminate or at least minimize this very substantial incentive for parties to litigate issues simply to delay the resolution of questions concerning representation. Even where parties raise legitimate issues, we need to ensure that those disputes are correctly and promptly resolved, without doing violence to our statutory mission.

A field committee was established to develop a training program in this very important area. The committee explored ways to close the gap between directed and stipulated elections and developed a training program to be implemented in the field to accomplish this objective. To implement this program, a Representation Case Training Conference was held in Baltimore, Maryland on September 11-12, 1995. Each Region designated the supervisors or managers who would be primarily responsible for training field offices employees in this area and they were carefully briefed on the training program at the conference. The program is contained in a binder which was provided to each conference participant. The material included in the binder is intended to serve as a resource to the Region as a whole.

In the area of the conduct of hearings, the committee drafted nine scenarios depicting a number of situations which could arise during the course of a hearing. The scenarios are designed to encourage hearing officers to be proactive in identifying and narrowing issues in dispute; excluding cumulative, burdensome or unnecessary evidence; discussing the order in which evidence will be presented; ensuring a complete record, and avoiding unnecessary delays. The overall goal is to develop more focused and abbreviated transcripts, without compromising on the quality and/or completeness of the record.

Regions should conduct several training sessions in which no more than three of these scenarios are discussed at one session. We estimate that it will take approximately 45 minutes to discuss in a fairly comprehensive manner each of the scenarios presented. The trainer(s) should meet with other supervisors, managers and/or the Director to preview the scenarios and teaching points which will be discussed before the session is conducted. Although discussion of all the scenarios would be worthwhile, Regions need not use a particular scenario if it is not appropriate for the staff's experience level or is unrelated to issues which may typically arise in the Region. All employees who may be potentially assigned to conduct a pre-election or post-election hearing should participate in this training. We encourage Regions to utilize a workshop format of no more than eleven employees at one time. The training groups should also be comprised of individuals with varying levels of experience.

The scenarios should be used to provide individual training to employees who may be hired or transferred from Headquarters in the future or to future participants in the Bridge Program. The materials are sufficiently self-contained as to be usable by managers or supervisors who were not training conference participants.

It is, of course, critically important that hearing officers thoroughly prepare for the conduct of hearings. Early identification and communication of issues is vital. Once issues are known, the hearing officer should meet with supervision to develop a plan for conducting the hearing. During this meeting, the employee and supervision should discuss the issues which have been raised or could potentially be raised at the hearing. Clearly, the level of supervision provided in developing this plan will be different depending on the experience of the hearing officer, and the supervisor should discuss with the employee how to best prepare for each hearing. Thorough preparation should result in a hearing officer who is in control of the hearing and who does not hesitate to be as proactive as necessary to develop a complete and concise record. Hearing outlines setting forth the necessary evidence, stipulations to seek, and a plan for the conduct of the hearing should be prepared. Strategies to limit testimony or further define the issues should be evaluated and used, where appropriate. Relevant factors necessary to a determination should be identified in order to ensure a complete record and accurate rulings excluding irrelevant evidence or appropriately rejecting offers of proof. The relevant case law should be researched and discussed.

It is important that constructive and timely feedback be provided to hearing officers after the hearing. If the record was unclear on a particular issue or if questions

arose in connection with the record evidence or particular rulings, these should be discussed with the hearing officer and suggested methods for handling certain problems or issues should be reviewed. Ways in which the hearing officer could have been more proactive in the development of the record should be explored. This feedback will serve to reinforce the training which was provided on a Regionwide basis and will help the Region improve upon the quality and timeliness of its decisions. Where appropriate, such issues should be integrated into a Regional training session.

In the area of preparing pre-election decisions and post-election reports, each Region should conduct a one-hour training session for all professionals who may be assigned to draft these documents. The materials included in the binder on these subjects should be distributed to the staff and reviewed with them. The Region may supplement this material with its own training on the drafting of decisions and reports. Regions are encouraged to discuss what is expected from employees in this area and to review Regional procedures and policies designed to expedite this task. "Model" sample decisions or reports should also be distributed to the staff. We will soon send you some pre-election decisions which were deemed to be of particularly high quality by the Division of Representation Appeals this year.

During the course of the Representation Case Training Conference, the participants were provided computer training on the use of "macros" for notetaking from transcripts and autotext features. Each Region should install the macro program on the computers of all professionals. All professional employees who may be assigned to draft petitions or post-election reports should attend a training session on these techniques. This training should be conducted by any of the supervisors or managers who attended the Representation Case Training Conference or any other staff member who has developed a particular expertise in this area. If unit employees are assigned this task, they should have an interest in doing this training on a volunteer basis and adjustments should be made to their workload, to the extent necessary and appropriate. We anticipate that this training should be completed in about an hour.

Several Regions may soon be experimenting with a software program, Summation, which may provide us with more options and increase our efficiency in this area. We will keep you apprised of any new developments.

The program developed by the committee is portable, flexible and can be implemented without need for extensive advance preparation by the trainers. The feedback obtained on this program from the conference participants was

overwhelmingly positive. It is extremely important that you implement this program as soon as possible and that time be allotted for the conduct of this training. We appreciate and anticipate that it may take some time to fully complete this training. However, the training was designed to help us achieve our goals in a very critical area and every effort should be made to complete the training within the next 6 months. Please let your respective Assistant General Counsel know when this training has been completed.

We have recently videotaped Chief Administrative Law Judge David Davidson speaking on the subjects of credibility resolutions and maintaining control of a hearing in the context of post-election hearings. Regional Attorney Al Palewicz, from Region 5, Baltimore, is completing work on a presentation on the application of rules of evidence to representation proceedings based upon the input provided to him by the participants in the Representation Case Training Conference. That presentation will be videotaped soon. These videotapes will be reproduced and distributed to the Regional Offices as part of this training program.

The committee that developed this program deserve special recognition and they have my personal appreciation. The members of the committee, in alphabetical order, are: Claude Harrell, SFX, Region 9; Michael Joyce, ARD, Region 6; Michael Karlson, SFA, Region 28; Gary Kendellen, ARD, Region 22; Karen LaMartin, ARD, Region 12; Joseph McMahon, ARD, Region 10; Al Reichard, ARD, Region 20; Robert Reisinger, ARD, Region 28; and Laurel Spillane, DRA, Region 31. Deputy Assistant General Counsel Celeste Mattina coordinated the conference. I also want to thank Chief Administrative Law Judge David Davidson and Regional Attorney Al Palewicz for generously contributing their time to participate in this training program.

Please contact your Assistant General Counsel or Deputy Assistant General Counsel Celeste J. Mattina if you have any questions with respect to the materials included in the binder, the training program or this memorandum.

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cc: NLRBU